

REMARKS

The present Amendment is in response to the Office Action mailed October 15, 2004, in the above-identified application. Enclosed herewith is a Petition requesting three-month extension of time for resetting the deadline for responding to the Office Action from January 15, 2005 to and including April 15, 2005.

In the Office Action, the Examiner objected to claims 1 and 2 as having informalities. As noted above, claims 1 and 2 have been amended in response to the informalities noted by the Examiner. Thus, claims 1 and 2 are deemed to satisfy the requirements of the M.P.E.P. and are otherwise allowable.

The Examiner rejected claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicants have amended claim 5 to change the recitation "said ball-shaped head" to --a ball-shaped head--. In view of the above-noted amendment, claim 5 is deemed to satisfy the requirements of 35 U.S.C. §112, second paragraph, and is otherwise allowable.

The Examiner rejected claims 1, 2 and 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 4 of U.S. Patent No. 6,645,249. In response, Applicants have filed a Terminal Disclaimer herewith.

The Examiner rejected claims 1, 2 and 5 under 35 U.S.C. §102(b) as being anticipated by French Patent Document FR 2 718 635 to Caenen et al. Referring to Figs. 10 and 11 thereof, Caenen et al. discloses a cervical prosthesis including an upper plate engaging a first vertebra C1 and a lower plate engaging a second vertebra C2. An insert 3 having a spherical top surface 15 is inserted into a channel 9 formed in the lower plate 2. In response to the Examiner's rejection, Applicants respectfully assert that claim 1 is unanticipated because the cited reference neither discloses nor suggests an intervertebral

spacer device including "at least one multi-pronged domed spring restoring force providing element" adapted to counteract compressive loads. Caenen provides absolutely no indication that its insert 3 (Figs. 10, 11) has any spring-like action or that it counteracts compressive loads by restoring the first and second plates 1, 2 to their normal position. For these reasons, claim 1 is unanticipated by Caenen and is otherwise allowable. Claims 2 and 5 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner also rejected claims 1 and 2 under 35 U.S.C. § 102(a) as being anticipated by WO 01/01893 to Marnay et al. Referring to the Fig. 1 thereof, Marnay discloses an intervertebral implant including an upper part 2 and a lower part 3 having a central indentation 19. The intervertebral implant includes a pivot insert 4 having a flat underside 24 and a spherically curved topside 25. The pivot insert 4 is insertable into the central indentation 19 for forming a ball joint between the upper part 2 and the lower part 3. In response to the Examiner's rejection, Applicants respectfully assert that claim 1 is unanticipated because Marnay neither discloses nor suggests an intervertebral spacer device including "at least one multi-pronged domed spring restoring force providing element" disposed between the first and second plates for counteracting compressive loads. Clearly, Marnay provides no indication that its pivot insert 4 (Fig. 1) has any spring-like features or that it serves as a spring-like element for counteracting compressive loads. For all of these reasons, claim 1 is unanticipated by Marnay and is otherwise allowable. Claim 2 is unanticipated, *inter alia*, by virtue of its dependence from claim 1, which is unanticipated for the reasons set forth above.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's Attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 15, 2005

Respectfully submitted,

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